

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED NATIONAL INSURANCE
COMPANY, a Pennsylvania
Insurance Company,

Plaintiff,

vs.

GUNDERSON, INC, an Oregon
Corporation; DAVIS-FROST, INC., a
Minnesota Corporation,

Defendants.

Court Case No. 08-CV-678
MJD/JJK

**PLAINTIFF'S
MEMORANDUM IN
RESPONSE TO
GUNDERSON'S MOTION
TO DISMISS DAVIS-FROST**

I. ARGUMENT

Gunderson has brought a motion to dismiss Davis-Frost based on a Settlement Agreement which Gunderson claims is a *Miller-Shugart* agreement. There are three reasons why United National objects to the dismissal of Davis-Frost. First, paragraph 15 of the Settlement Agreement mandates summary judgment in favor of United National¹. Second, United National has asserted a claim for partial reimbursement of attorney's fees from Davis-Frost in the amount of approximately \$20,000.00. (*See United National Second Amended Complaint, pp. 11-13; and Affidavit of Aaron M. Simon*). Third, Davis-Frost is obligated to pay \$5,000 per policy should United National be ordered to pay any indemnity on Davis-Frost's behalf. (*See Deductible Liability Insurance Endorsements of the United National Insurance Policies issued to Davis-Frost attached to Affidavit of Aaron M. Simon*).

¹ See United National's Memorandum in support of its motion for Summary Judgment which United National intends to electronically file with the Court the week of January 25, 2010.

II. CONCLUSION

United National objects to Gunderson's motion to Dismiss Davis-Frost because: 1) paragraph 15 of the Settlement Agreement mandates summary judgment in favor of United National; 2) United National has asserted a claim for partial reimbursement of attorney's fees from Davis-Frost in the amount of approximately \$20,000.00; and 3) Davis-Frost is obligated to pay \$5,000 per policy should United National be ordered to pay any indemnity on Davis-Frost's behalf.

TOMSCHE, SONNESYN & TOMSCHE, P.A.

Dated: 1-25-10

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